

**FEDERAL COURT OF AUSTRALIA**

**Notice to Group Members**

*Raymond Boulos v MRVL Investments Pty Ltd*

*NSD 2168/2019*

**1. Why is this notice important?**

A class action has been commenced in the Federal Court of Australia by Raymond Boulos against MRVL Investments Pty Ltd (**Merivale**) on 24 December 2019. The class action has been commenced by Mr Boulos on his own behalf (**Applicant**) and on behalf of a specified class of other people known as **Group Members**, which are discussed below.

The class action makes two alternative claims.

The first of the alternative claims is that the Hospitality Industry (General) Award 2010 (**Award**) applied to Mr Boulos and Group Members from 25 December 2013 until the date of the filing of the claim, and that Merivale did not pay such persons all their entitlements for their hours of work in accordance with the Award.

In response to this claim, Merivale contends that Merivale Employee Collective Agreement 2007 (**Merivale Agreement**) applied to such persons from 25 December 2013 to 4 March 2019 when the Merivale Agreement was terminated by consent, and as such the Award could not apply as a matter of law during that period.

It is not disputed in these proceedings that the Award applied from 4 March 2019. There is also no allegation in these proceedings that Merivale did not comply with the Award on and from 4 March 2019.

The second of the alternative claims contends that the Merivale Agreement did in fact apply in the period 25 December 2013 to 4 March 2019 but that Merivale did not pay all of the entitlements for overtime due under the Merivale Agreement.

In response to this claim, Merivale denies that it did not pay all of the overtime entitlements due under the Merivale Agreement.

On 14 October 2020, the Federal Court ordered that this notice be published for the information of Group Members who may be affected by the class action.

**You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.**

If there is anything in it that you do not understand, you can contact Adero Law (the solicitor for Mr Boulos) (**Adero**) at [merivale@aderolaw.com.au](mailto:merivale@aderolaw.com.au) or seek your own independent legal advice.

**THE OPT OUT DATE IS 11 December 2020**

## 2. What is a class action?

A class action is an action that is brought by one person (**Applicant**) on his or her own behalf and on behalf of Group Members against another person (**Respondent**), being Merivale in this instance, where the Applicant and the Group Members have similar claims against the Respondent.

Group Members are bound by any judgment or settlement entered-into in a class action unless they have “opted out” of the proceeding.

This means that:

- (a) if the class action is successful, Group Members may be eligible for a share of any settlement monies or Court awarded damages;
- (b) if the class action is unsuccessful, Group Members are bound by that result; and
- (c) regardless of the outcome of the class action, Group Members will not be able to pursue their claims against the Respondent in separate legal proceedings unless they have opted out.

The Applicant and Group Members will, unless they “opt out” of the class action, be bound by the Court’s decision as to whether the Award or the Merivale Agreement applied in the period 25 December 2013 to 4 March 2019, as well as any subsequent decisions of the Court.

If you consider that you have claims against Merivale in relation to your employment which are based on your individual circumstances or are otherwise additional to the claims described in section 4 below, then it is important that you seek independent legal advice about the potential binding effects of the class action before the deadline for opting out (see below).

## 3. Who are Group Members?

The class action is brought by Mr Boulos on his own behalf and on behalf of all persons who are **Group Members** as defined in the Originating Application and the Amended Statement of Claim (**ASOC**).

Group Members are defined as all persons who were, in the period between 25 December 2013 and 24 December 2019, employed by Merivale:

- (a) to work in the Hospitality Industry as defined in cl 4.2 of the Award,
  - (b) in a position the duties and functions of which were described in one or other of the classifications within “Schedule D – Classification Definitions” of the Award,
- to whom Merivale represented that the Merivale Agreement covered and applied to such employment.

As noted above, the Merivale Agreement was terminated with the consent of Merivale on 4 March 2019. Accordingly, you will **not** be a Group Member if your employment with

Merivale **commenced** on or after 4 March 2019 and this notice **does not apply to you**. As to “Schedule D – Classification Definitions” of the Award, these include job descriptions such as food and beverage attendants and supervisors, kitchen attendants and cooks, guest services and supervisors, among a range of others. The full list of classifications is set out in Annexure A to this Notice and can be found at Schedule D to the historic version of the Award published on the Fair Work Commission website at: [https://www.fwc.gov.au/documents/documents/modern\\_awards/past-awards/ma000009-as-at-2020-05-28.pdf](https://www.fwc.gov.au/documents/documents/modern_awards/past-awards/ma000009-as-at-2020-05-28.pdf).

Adero is the law firm conducting the class action on behalf of Mr Boulos. If you are unsure whether or not you are a Group Member, you should contact Adero on (02) 6189 1022 or at [merivale@aderolaw.com.au](mailto:merivale@aderolaw.com.au) or seek your own legal advice without delay.

You may otherwise contact Merivale for details and information concerning your employment or former employment.

#### **4. What is this class action about?**

In the ASOC filed in Federal Court, Mr Boulos alleges that:

- (a) Mr Boulos and the Group Members were employees whose employment was subject to the coverage and application of the Award;
- (b) Merivale was obliged to pay, as ordinary pay and for overtime and relevant penalties and allowances, the amount specified in the Award at each of the relevant times; and
- (c) Merivale failed to pay to Mr Boulos and to Group Members overtime and relevant penalties and allowances as specified in the Award at each of the relevant times.

In the alternative to the above, Mr Boulos alleges that if Mr Boulos’ and the Group Members’ employment was subject to the coverage and application of the Merivale Agreement:

- (a) the Merivale Agreement provided, except by agreement between Merivale and relevant employees, that the ordinary hours of work shall not exceed 38 hours per week;
- (b) Merivale was obliged to pay at the ordinary rate all hours agreed to be worked in excess of 38 hours per week at each of the relevant times;
- (c) Merivale failed to pay Mr Boulos and Group Members for all hours worked in excess of 38 hours per week (except where the additional hours worked exceeded 55 hours per week, for which Mr Boulos and Group Members were paid), as specified in the Merivale Agreement at each of the relevant times.

As a result, Mr Boulos, on behalf of himself and the Group Members:

- (a) claims that he and the Group Members suffered loss; and
- (b) seeks compensation and penalties from Merivale.

In response to this claim, Merivale says that the Merivale Agreement applied to Mr Boulos and Group Members (not the Award). Merivale otherwise says that it paid all of the entitlements due under the Merivale Agreement.

On 27 August 2020, the Federal Court made orders that the Court decide certain questions as to whether the Award or the Merivale Agreement applied (**Award Application Question**) first and separately from other questions arising in the proceedings.

This will involve considering the decision made by the Workplace Authority Director (the statutory authority responsible for approving workplace agreements at that time) to approve the Merivale Agreement on 12 June 2009.

If the Court ultimately determines that the Award applied, Merivale says that it should not be ordered to pay any compensation to Mr Boulos and Group Members because it says that it conducted its operations on the basis that it was informed by the Workplace Authority Director that the Merivale Agreement had been approved under the relevant legislation in June 2009 and applied by law, and that it did not know otherwise. These separate issues are *not* part of the Award Application Question and would be determined at a later hearing.

## 5. What is 'Opt Out'?

The Applicant in a class action does not need to seek the consent of Group Members to commence a class action on their behalf or to identify a specific Group Member. However, Group Members can cease to be Group Members by opting out of the class action. An explanation of how Group Members are able to opt out is found below in the section headed "How can you opt out of the class action?"

## 6. Will you be liable for legal costs if you remain a Group Member?

You will **not become liable for any legal costs** simply by remaining as a Group Member. However:

- (a) if any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Applicant in running the class action but which are not able to be recovered from the Respondent (such costs would only be recoverable from compensation, you will never be required to pay any contribution to the Applicant's costs in excess of any compensation you receive); and
- (b) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Adero or other lawyers to do that work for you at fees to be agreed with Adero or the other lawyers.

**7. What will happen if you choose to remain a Group Member?**

If you do not opt out, you will be bound by any settlement or judgment of the proceedings.

This means that if the class action is successful you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicant and Group Members,

It also means that if the class action is unsuccessful, you will be bound by the Court's judgment in that regard, including in relation to the Award Application Question.

**8. What Group Members need to do**

**(a) How can you remain a Group Member?**

If you wish to remain a Group Member there is **nothing you need to do** at the present time. The Applicant will continue to bring the proceeding on your behalf, including to have the Award Application Question determined on your behalf. If you wish to do so, you can contact the Applicant's lawyers, Adero, on the number above and register as a Group Member so that future notices about the class action can be sent to your preferred address.

**(b) How can you opt out of the class action?**

If you do not wish to remain a Group Member you must opt out of the class action. If you opt out you will not be bound by the Award Application Question and would not be entitled to share in the benefit of any order, judgment or settlement in the class action that may arise from the Court's decision on the Award Application Question or any other question in the class action, but you will be at liberty to bring your own claim against Merivale, provided that you issue Court proceedings within the time limit applicable to your claim.

If you wish to bring your own claim against Merivale, you should seek your own independent legal advice about your claim and the applicable time limit **prior** to opting out.

If you wish to opt out of the class action you **must** do so by completing an "Opt Out Notice" in the form shown below (Form 21 of the Court's approved forms), then returning it to the Registrar of the Federal Court of Australia at the address on the form by 4:00pm on 11 December 2020.

**IMPORTANT: the Notice must reach the Registrar by no later than 4:00pm 11 December 2020**, otherwise it will not be effective.

You should submit the Opt Out Notice if you qualify as a Group Member and you wish to opt out of the class action.

Each Group Member seeking to opt out should fill out a separate form.

**9. Where can you obtain copies of relevant documents?**

Copies of relevant documents, including the Originating Application, Amended Statement of Claim, and Merivale's Defence, may be obtained by:

- (a) downloading them from <https://www.aderolaw.com.au>

- (b) inspecting them between 9am and 5pm on weekdays at one of the offices of Adero, contact details for which are available from <https://www.aderolaw.com.au> or by calling **(02) 6189 1022**;
- (c) visiting the New South Wales Registry of the Federal Court in New South Wales:  
Level 17, Law Courts Building  
184 Philip St, Queens Square  
Sydney NSW 2000
- (e) calling the New South Wales Registry on (02) 9230 8567

**This notice is published pursuant to orders of the Federal Court of Australia made on 14 October 2020**

### Schedule D—Classification Definitions

[Sched D varied by [PR992056](#), [PR994455](#), [PR514972](#), [PR540249](#), [PR716109](#)]

#### D.1 Introductory level

In respect of all classification streams, introductory level means the level of an employee who enters the industry and who has not demonstrated the competency requirements of level 1. Such an employee will remain at this level for up to three months while the appropriate training for level 1 is undertaken and assessment made to move from the introductory level to level 1. At the end of three months from entry, an employee will move to level 1 other than where agreement has been reached and recorded between the employee and the employer that further training of up to three months is required for the employee to achieve competence for movement to level 1.

#### D.2 General classification definitions

##### D.2.1 Food and beverage stream

**Food and beverage attendant grade 1** means an employee who is engaged in any of the following:

- picking up glasses;
- emptying ashtrays;
- general assistance to food and beverage attendants of a higher grade not including service to customers;
- removing food plates;
- setting and/or wiping down tables; and
- cleaning and tidying of associated areas.

[Definition of **Food and beverage attendant grade 2** substituted by [PR716109](#) ppc 23Jan20]

**Food and beverage attendant grade 2** means an employee who has not achieved the appropriate level of training and who is engaged in any of the following:

- supplying, dispensing or mixing of liquor including the sale of liquor from the bottle department;
- assisting in the cellar or bottle department;
- undertaking general waiting duties of both food and/or beverage including cleaning of tables
- receipt of monies;
- attending a snack bar;
- engaged on delivery duties; and
- taking reservations, greeting and seating guests.

[Definition of **Food and beverage attendant grade 3** substituted by [PR716109](#) ppc 23Jan20]

**Food and beverage attendant grade 3** means an employee who in addition to the tasks performed by a **Food and beverage attendant grade 2** is engaged in any of the following:

- the operation of a mechanical lifting device;
- attending a wagering (e.g. TAB) terminal, electronic gaming terminal or similar terminal;
- full control of a cellar or liquor store (including the receipt, delivery and recording of goods within such an area);
- mixing a range of sophisticated drinks;
- supervising food and beverage attendants of a lower grade; and
- training food and beverage attendants of a lower grade.

**Food and beverage attendant (tradesperson) grade 4** means an employee who has completed an apprenticeship in waiting or who has passed the appropriate trade test and as such carries out specialised skilled duties in a fine dining room or restaurant.

**Food and beverage supervisor** means an employee who has the appropriate level of training including a supervisory course and who has the responsibility for supervision, training and co-ordination of food and beverage staff, or stock control for a bar or series of bars.

#### D.2.2 Kitchen stream

**Kitchen attendant grade 1** means an employee engaged in any of the following:

- general cleaning duties within a kitchen or food preparation area and scullery, including the cleaning of cooking and general utensils used in a kitchen and restaurant;
- assisting employees who are cooking;
- assembling and preparing ingredients for cooking; and
- general pantry duties.

**Kitchen attendant grade 2** means an employee who has the appropriate level of training and who is engaged in specialised non-cooking duties in a kitchen or food preparation area, or supervision of kitchen attendants.

**Kitchen attendant grade 3** means an employee who has the appropriate level of training including a supervisory course and has the responsibility for the supervision, training and co-ordination of kitchen attendants of a lower grade.

**Cook grade 1** means an employee who carries out cooking of breakfasts and snacks, baking, pastry cooking or butchering.

**Cook grade 2** means an employee who has the appropriate level of training and who performs cooking duties including baking, pastry cooking or butchering.

**Cook (tradesperson) grade 3** means a commi chef or equivalent who has completed an apprenticeship or who has passed the appropriate trade test, and who is engaged in cooking, baking, pastry cooking or butchering duties.

**Cook (tradesperson) grade 4** means a demi chef or equivalent who has completed an apprenticeship or has passed the appropriate trade test and who is engaged to perform general or specialised cooking, butchering, baking or pastry cooking duties and/or supervises and trains other cooks and kitchen employees.

**Cook (tradesperson) grade 5** means a chef de partie or equivalent who has completed an apprenticeship or has passed the appropriate trade test in cooking, butchering, baking or pastry cooking and has completed additional appropriate training and who performs any of the following:

- general and specialised duties including supervision or training of other kitchen staff;
- ordering and stock control; and
- supervising other cooks and other kitchen employees in a single kitchen establishment.

### **D.2.3 Guest services stream**

**Guest service grade 1** means an employee who performs any of the following:

- laundry and/or linen duties which may include minor repairs to linen or clothing such as buttons, zips, seams and working with flat materials;
- the collection and delivery of guests' personal dry cleaning and laundry, linen and associated materials to and from accommodation areas;
- performs general cleaning duties; and
- parking guests' cars.

**Guest service grade 2** means an employee who has not achieved the appropriate level of training and who is engaged in any of the following:

- servicing accommodation areas and cleaning thereof;
- receiving and assisting guests at the entrance to the establishment;
- driving a passenger vehicle or courtesy bus;
- transferring guests' baggage to and from rooms;
- assisting in the dry cleaning process;
- cleaning duties using specialised equipment and chemicals; and
- providing butler services such as food, beverage and personalised guest service.

**Guest service grade 3** means an employee who has the appropriate level of training and who is engaged in any of the following:

- supervising guest service employees of a lower grade;

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- providing butler services such as food, beverage and personalised guest service;
- major repair of linen and/or clothing including basic tailoring and major alterations and refitting; and
- dry cleaning.

**Guest service grade 4** means an employee who has completed an apprenticeship or who has passed the appropriate trade test or otherwise has the appropriate level of training to perform the work of a tradesperson in dry cleaning, tailoring or as a butler.

**Guest service supervisor** means an employee with the appropriate level of training including a supervisory course who supervises, trains and co-ordinates the work of employees engaged in a housekeeping department.

**Front office grade 1** means an employee who is engaged as an assistant in front office duties including night auditing, telephonist, receptionist, cashier, information services or reservations.

**Front office grade 2** means an employee who has the appropriate level of training and is in the front office engaged in duties including telephonist, receptionist, cashier, information services or reservations.

**Front office grade 3** means an employee who has the appropriate level of training and is in the front office engaged in duties including assisting in training and supervision of front office employees of a lower grade.

**Front office supervisor** means an employee who has the appropriate level of training including a supervisory course and who supervises, trains and co-ordinates the work of front office employees.

### D.2.4 Administration stream

**Clerical grade 1** means an employee who is required to perform basic clerical and routine office duties such as collating, filing, photocopying and delivering messages.

**Clerical grade 2** means an employee who is engaged in general clerical or office duties, such as typing, filing, basic data entry and calculating functions.

**Clerical grade 3** means an employee who has the appropriate level of training and who performs any of the following:

- operates adding machines, switchboard, paging system, telex machine, typewriter or calculator;
- uses knowledge of keyboard and function keys to enter and retrieve data through computer terminal;
- copy types at 25 words per minute with 98% accuracy;
- maintains mail register and records;
- maintains established paper-based filing/records systems in accordance with set procedures including creating and indexing new files, distributing files within the organisation as requested, monitoring file locations;

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- transcribes information into records, completes forms, takes telephone messages;
- acquires and applies a working knowledge of office or sectional operating procedures and requirements;
- acquires and applies a working knowledge of the organisation's structure and personnel in order to deal with inquiries at first instance, locates appropriate staff in different sections, relays internal information, responds to or redirects inquiries, greets visitors;
- keeps appropriate records; and
- sorts, processes and records original source financial documents (e.g. invoices, cheques, correspondence) on a daily basis; maintains and records petty cash; prepares bank deposits and withdrawals and does banking.

And who has the appropriate level of training and also performs any of the following:

- operates computerised radio telephone equipment, micro/personal computer, printing devices attached to personal computer, dictaphone equipment, typewriters;
- produces documents and correspondence using knowledge of standard formats, touch types at 40 words per minute with 98% accuracy, audio types;
- uses one or more software application package(s) developed for a micro/personal computer to operate and populate a database, spreadsheet/worksheet to achieve a desired result; graph previously prepared spreadsheet; use simple menu utilities of personal computer;
- follows standard procedures or template for the preceding functions using existing models/fields of information;
- Creates, maintains and generates simple reports;
- uses a central computer resource to an equivalent standard;
- uses one or more software packages to create, format, edit, proof read, spell check, correct, print and save text documents, e.g. standard correspondence and business documents;
- takes shorthand notes at 70 wpm and transcribes with 95% accuracy;
- arranges travel bookings and itineraries, makes appointments, screens telephone calls, follows visitor protocol procedures, establishes telephone contact on behalf of executive;
- applies a working knowledge of the organisation's products/services, functions, locations and clients;
- responds to and acts upon most internal/external inquiries in own function area;
- uses and maintains a computer-based record management system to identify, access and extract information from internal sources; maintains circulation, indexing and filing systems for publications, reviews files, closes files, archives files; and

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- maintains financial records and journals, collects and prepares time and wage records; prepares accounts queries from debtors; posts transactions to ledger.

**Clerical supervisor** means an employee who has the appropriate level of training including a supervisory course and who co-ordinates other clerical staff.

### D.2.5 Security stream

**Doorperson/security officer grade 1** means a person who assists in maintenance of dress standards and good order at an establishment.

**Timekeeper/security officer grade 2** means a person who is responsible for timekeeping of staff, for the security of keys, for the checking in and out of delivery vehicles and/or for the supervision of doorperson/security officer grade 1 personnel.

### D.2.6 Leisure activities stream

**Leisure attendant grade 1** means a person who acts as an assistant instructor, pool attendant and/or can be responsible for the setting up, distribution and care of equipment and the taking of bookings.

**Leisure attendant grade 2** means a person who has the appropriate level of training and takes classes and/or directs leisure activities such as sporting areas, health clubs and swimming pools.

**Leisure attendant grade 3** means a person who has the appropriate level of training and who plans and co-ordinates leisure activities for guests and may supervise other leisure attendants.

### D.2.7 Stores stream

**Storeperson grade 1** means an employee who receives and stores general and perishable goods and cleans the store area.

**Storeperson grade 2** means an employee who, in addition to the duties for a storeperson grade 1, may also operate mechanical lifting equipment such as a fork-lift and/or who may perform duties of a more complex nature.

**Storeperson grade 3** means an employee who has the appropriate level of training and who:

- implements quality control techniques and procedures;
- understands and is responsible for a stores/warehouse area or a large section of such an area;
- has a highly developed level of interpersonal and communications skills;
- is able to supervise and provide direction and guidance to other employees including the ability to assist in the provision of on-the-job training and induction;
- exercises discretion within the scope of this grade; and who may exercise skills attained through the successful completion of an appropriate warehousing certificate; and may perform indicative tasks at this level such as:
  - liaising with management, suppliers and customers with respect to stores operations; and

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- detailing and co-ordinating activities of other storepersons and acting in a leading hand capacity for in excess of 10 storepersons;
- maintains control registers including inventory control and being responsible for preparation and reconciliation of regular reports or stock movements, dispatches, etc; and
- supervises the receipt and delivery of goods, records, outgoing goods, responsible for the contents of a store.

### D.2.8 Maintenance and trades—other than the cooking trade

[D.2.8 substituted by [PR514972](#) ppc 04Oct11]

**Handyperson** means a person who is not a tradesperson and whose duties include the performance of routine repair work and maintenance in and about the employer's premises.

**Fork-lift driver** means an employee who has a recognised fork-lift licence and who is engaged solely on the basis of driving a fork-lift vehicle. Those employees who operate a fork-lift as only part of their duties will be paid at the level 3 classification rate in clause 20.1.

**Gardener grade 1** means an employee primarily engaged in the following activities:

- keeping areas clean and tidy;
- weeding and watering;
- trimming, mowing of surrounds, etc., with hand implements;
- assistance in preparing areas for play;
- assistance in course or green maintenance and construction;
- operation of a limited range of vehicles, including motor vehicles;
- performs non-trade tasks incidental to the employee's work.

**Gardener grade 2** means an employee who is engaged in any of the following activities in addition to the work of grade 1:

- operation and minor maintenance of motorised equipment under supervision, other than machinery or equipment requiring the holding of specialised licences;
- assistance in the maintenance, renovation and reconstruction of greens and fairways, and/or maintenance of playing surfaces, including mowing, rolling, top dressing, seeding, turfing and sprigging, fertilising under supervision, planting and maintenance of trees, pruning under supervision;
- applying fertilisers, fungicides, herbicides and insecticides under general supervision;
- gardening duties including the planting and trimming of trees, sowing, planting and cutting of grass, and the watering of plants, gardens, trees, lawns and displays;
- routine maintenance of turf, synthetic, artificial and other play surfaces;

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- completion of basic records;
- assistance in the construction and installation of facilities and systems;
- performing tasks incidental to the employee's work;
- handyperson duties;
- supervising gardeners of a lower grade.

**Gardener grade 3 (tradesperson)** means an employee who has completed trade or equivalent qualifications and undertakes one or more of the following duties (including non-trade tasks incidental to the employee's work):

- operate, maintain and adjust machinery as appropriate;
- clean machinery and inspects machinery after each use, reporting any problems to a management employee;
- applying fertilisers, fungicides, herbicides and insecticides as directed by a management employee;
- preparing turf, synthetic, artificial and other surfaces for play;
- maintenance and repair of vehicles and/or motor engines;
- repair and minor renovation work;
- formation and maintenance of all gardens, lawns and greens;
- the planting, maintenance and care of trees;
- training and supervision of employees of a lower grade, including apprentices.

**Gardener grade 4 (tradesperson)** means an employee who has satisfactorily attained the appropriate level of training at trade or the equivalent level, together with the additional requirements in supervision or other appropriate specialist modules. In addition to the duties of levels 1 to 3, the employee is also engaged in the following activities:

- supervision and training of subordinate staff, including tradespersons;
- presentation of written and or verbal reports including budgets,
- general liaison with management;
- activities requiring application of specialist skills.

### D.2.9 Managerial staff (Hotels)

[D.2.9 varied by [PR994455](#) from 01Jan10; Managerial staff—hotels renamed as Managerial staff (Hotels) by [PR540249](#) ppc 15Aug13]

For the purpose of this additional classification, **hotels** means hotels, resorts, casinos, taverns, wine saloons, wine and spirit merchants retailing to the general public and other retail licensed establishments in or in connection with accommodation, with the selling of drinks, preparing and serving food and drinks, cleaning and attending to the premises and all other services associated therewith.

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In this additional classification, **hotel manager** means an employee (however designated) who:

- under the direction of senior management is required to manage and co-ordinate the activities of a relevant area or areas of the hotel; and
- directs staff to ensure they carry out their duties in the relevant area or areas of the hotel; and
- implements policies, procedures and operating systems for the hotel;

but excludes an employee who is employed to undertake the duties of senior management, responsible for a significant area of the operations of one or more hotels. Indicative position titles for such an employee include:

- Company secretary;
- Chief accountant;
- Personnel or human resources manager;
- Financial controller;
- Industrial relations manager;
- Venue manager;
- General/hotel manager;
- Executive assistant manager;
- Regional manager; or
- a Manager to whom any of those positions report or are responsible.

An employee appointed as a Manager will have completed an appropriate level of training in business management or have relevant industry experience including the supervision of staff in one or more areas of an hotel. In a General Hotel, this classification is commonly known as an Assistant manager. In an Accommodation Hotel, this classification may include any of the following positions: Duty manager; Assistant food and beverage manager; Assistant rooms division manager; Assistant front office manager or equivalent position.

This additional classification does not apply to:

- Any hotel manager who is an employee of a proprietary or private company (within the meaning of the Corporations Law) where the Hotel Manager holds sufficient number of shares to entitle the Hotel Manager to voting control at general meetings of the company; or
- Any hotel manager who is the senior partner of a partnership or has at least 49% of that partnership; or
- A parent, spouse or de facto partner, son or daughter of a hotel manager excluded from the additional classification by this paragraph.

## **D.3 Definitions for the purposes of the Casino Gaming Stream**

### **D.3.1 General**

**Casino** means a gaming establishment holding a casino license under relevant State legislation. The term does not include a gaming facility that is a part or section of a hospitality establishment such as a hotel or tavern operation.

**Casino table game** means a casino game played under the control and direction of a table game employee. It includes games that are normally played at a table and games that include electronic aids to play the game such as Rapid Roulette.

**Major game** means a table game that requires a table game employee to undertake a minimum of 80 hours formal training to learn the game rules and competently deal the game in accordance with the minimum standards of the employer and the relevant casino regulatory authority.

**Appropriate level of training** for casino gaming employees means that a casino gaming employee has:

- completed a relevant training course accredited by the AQF; or
- completed training to a level or standard imposed by a statutory gaming licensing authority; or
- been assessed to have skills at least equivalent to those attained through the suitable training referred to above, such assessment to have been undertaken by a qualified skills assessor; or
- at 1 January 2010, had been doing the work of a particular classification for a period of at least three months.

### **D.3.2 Casino table gaming**

**Casino table gaming employee grade 1** means an employee who has completed the appropriate level of training and has commenced in one major game offered by the casino.

**Casino table gaming employee grade 2** means an employee who has completed the appropriate level of training and has commenced in two major games offered by the casino.

**Casino table gaming employee grade 3** means an employee who has completed the appropriate level of training and has commenced in three major games offered by the casino.

**Casino table gaming employee grade 4** means an employee engaged as such who undertakes table game inspection duties including ensuring that correct procedures and standards are observed by table game employees of a lower grade. This classification does not apply to managerial employees. The provisions of clause 25—Higher duties, will apply to Casino table game employees who have not been appointed to this grade but are required to perform any functions of this position.

### D.3.3 Casino electronic gaming

**Casino electronic gaming employee grade 1** means an employee in a casino who has received the appropriate level of training and who is engaged in any of the following:

- providing information on customer loyalty programs, electronic gaming promotions or services and facilities within a gaming machine area; and/or
- explaining to patrons the playing of gaming machines.

**Casino electronic gaming employee grade 2** means an employee in a casino who has received the appropriate level of training and who is engaged in any of the following:

- explaining to patrons the playing of gaming machines and providing pay-outs and rectifying minor malfunctions;
- selling and redeeming network gaming games such as Keno, TAB or other network games;
- conducting network games; and
- explaining to patrons the playing of gaming machines.

### D.3.4 Casino Finance

**Gaming finance employee grade 1** means an employee engaged to undertake any Count functions including:

- hard and/or soft count;
- shuffling and preparation of playing cards for table games;
- destruction of playing cards, dice, etc. for table games.

**Gaming finance employee grade 2** means an employee engaged to undertake any Change Booth functions including:

- limited supervision of gaming finance grade 1 employees;
- counting of change and associated change booth duties;
- sale and redemption of electronic gaming tickets.

**Gaming finance employee grade 3** means an employee engaged to undertake all grade 2 change functions including supervision of employees of a lower grade when required plus any of the following:

- assisting with the verification of floats and change machines;
- training employees in duties and functions of a lower grade;
- an employee engaged to undertake one cage function.

**Gaming finance employee grade 4** means:

- an employee engaged to undertake two cage cashier functions; or

- gaming finance revenue audit clerk functions.

**Gaming finance employee grade 5** means an employee engaged to undertake more than two cage cashier functions.

For the purposes of the Gaming Finance Stream, **cage function** includes:

- front window cashier duties including exchanging gaming chips for currency, controlling a float, recording transactions and reconciliation duties; or
- bank cashiering including Fill Bank duties such as receiving, disbursing, reconciling and controlling receipt and issue of gaming chips to gaming tables from the Cage and Main Bank duties; or
- Premium Group settlements and buy-in.

For the purposes of the Gaming Finance Stream, **cashier function** includes supervision of employees of a lower grade when required.

### **D.3.5 Casino equipment technicians**

**Casino equipment technician grade 1** means an employee who has the appropriate level of training and who is competent at performing repairs, servicing and installation of non-electronic gaming and associated equipment as well as assisting Casino equipment technicians of a higher grade.

**Casino equipment technician grade 2** means an employee including a tradesperson who has the appropriate level of training and who is competent at performing repairs, servicing and installation of electronic gaming and associated equipment under supervision.

**Casino equipment technician grade 3** means an employee appointed as such who has the appropriate level of training and who without supervision applies technical knowledge and skills to the tasks of installing, repairing, maintaining, servicing, modifying, commissioning, testing, fault finding and diagnosing various forms of video and other electronically or mechanically-controlled gaming equipment. This level also includes an employee required to supervise and/or check the work of Casino equipment technicians of lower grades.

### **D.3.6 Casino security**

**Customer liaison officer** means an employee in a casino who holds appropriate licenses and who is engaged to work as an area or door attendant to enforce dress, behaviour and entry requirements at the casino.

**Security officer grade 1** means an employee in a casino who holds appropriate licenses and is required to carry out routine security functions throughout the Casino complex, including the duties of securing, watching, guarding and/or protecting the premises including responding to alarm signals and incidents.

**Security officer grade 2** means an employee in a casino who performs work as required above and beyond the skills of an employee at grade 1 to the level of their training. At this level an employee is required to perform cash escort and soft drop duties. This level also includes a security employee who in the opinion of the employer has no previous relevant experience at this level, and is undertaking the

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tasks of a surveillance officer while undergoing training and gaining experience during the first six months of employment as such.

**Surveillance operator** means an employee in a casino required to monitor, observe and report upon the operations of the casino by means of visual or remote observation, including the use of electronic surveillance and recording systems as follows:

- input information or react to signals and instruments related to electronic surveillance;
- keyboard operation to alter the parameters within an integrated security surveillance system; and
- co-ordinate, monitor or record the activities of Security officers utilising a verbal communications system.

Form 21  
Rule 9.34

**OPT OUT NOTICE**

No. NSD 2168 of 2019

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

**Raymond Boulos**

Applicant

**Merivale Investments Pty Ltd**

(ACN 000 620 888)

Respondent

To: The Registrar  
Federal Court of Australia  
NSW District Registry  
Level 17, Law Courts Building  
184 Philip St, Queens Square  
Sydney NSW 2000

\_\_\_\_\_, a Group Member in this representative proceeding,  
gives notice under section 33J of the *Federal Court of Australia Act 1976*, that he/she is opting  
out of the representative proceeding.

Date:

Signed by \_\_\_\_\_ (print name)

Telephone:

Email:

Address:

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**If you are signing as the solicitor or representative:**

Name:

Date:

Capacity in which you are signing:

Telephone:

Email:

Address: